

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL COACH, et al	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al	:	
Defendants.	:	No. 01-4550

MEMORANDUM AND ORDER

J. M. KELLY, J. DECEMBER , 2001

Presently before the Court is a Request For Service Of Summons filed on October 12, 2001 by Daniel Coach and Ronald Chavis, the self-designated class representatives of a class action suit filed against numerous officials of the City of Philadelphia for violations of the Constitution. Plaintiffs seek to have the U.S. marshals serve the twenty (20) summons, claiming they are unable to properly serve the Defendants because they are currently incarcerated. The Court has learned, however, that while Daniel Coach is still incarcerated at the Philadelphia Detention Center, Ronald Chavis is no longer incarcerated. Furthermore, the Plaintiffs, while proceeding pro se, are not proceeding in forma pauperis.

Federal Rule of Civil Procedure 4(c) governs service of summons and complaint. It provides:

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) and shall furnish the

person effecting service with the necessary copies of summons and complaint.

(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that the service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for the purpose. Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915

An incarcerated plaintiff, proceeding pro se and in forma pauperis, is entitled to rely on the United States Marshal for service. See Harper v. Sheppard, 208 F.3d 221, 222 (9th Cir. 2000). Plaintiffs, however, are not proceeding in forma pauperis and Class Representative Chavis is no longer incarcerated.

Furthermore, Federal Rule of Civil Procedure 4, as amended, is intended "principally to relieve United States Marshals of the burden and expense of serving summonses." See Mendez v. Elliott, 45 F.3d 75, 78 (4th Cir. 1995) (citations omitted). "In transferring the burden of service to the litigants and imposing on them a 120-day period for service,¹ the amendments also serve

¹Federal Rule of Civil Procedure 4(m) requires that if the complaint is not served within 120 days after it is filed, the complaint must be dismissed absent a showing of good cause. Federal Rule of Civil Procedure 6(b), however, enables the court to act "(1) with or without motion . . . if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period . . . where the failure to act was the result of excusable neglect." Whether the court acts before or after the deadline for service has passed, however, the court may only grant the extension for good cause. See Mendez, 45 F.3d at 78 (citations omitted).

to encourage more efficient, speedy and inexpensive litigation, values espoused by Rule 1." Id. Considering these values, the Court declines to direct that service be effected by a United States marshal or appoint any other person or officer for the purpose. Accordingly, Plaintiffs' Request For Service Of Summons is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.